

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 12. NATURAL RESOURCES

#### CHAPTER 2. RADIATION REGULATORY AGENCY MEDICAL RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS

##### PREAMBLE

**1. Sections Affected**

R12-2-101  
R12-2-401  
R12-2-501  
R12-2-502  
R12-2-503  
R12-2-504  
R12-2-505  
R12-2-506  
R12-2-601  
R12-2-602  
R12-2-603  
R12-2-604  
R12-2-605

**Rulemaking Action**

Amend  
Amend  
New Section  
New Section  
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New Section

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-2803(A)

Implementing statute: A.R.S. § 32-2815

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 2971, July 19, 2002

Notice of Rulemaking Docket Opening: 9 A.A.R. 4013, September 12, 2003

**4. The name and address of agency personnel with whom persons may communicate regarding the rules:**

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**5. An explanation of the rules, including the agency's reasons for initiating the rules:**

Introductory statement: The majority, Articles 5 and 6 are new Sections resulting from legislation requiring certification of nuclear medicine and peripheral bone mineral densitometry technologists. There are two amendments to Article 1. The first adds verbiage to restrict the radiography of human tissue such as breast tumors to radiologic technologists. The second expands the definition of the upper extremity to include the anatomical area of the shoulder allowing practical technologists in radiology to perform radiography of the entire upper extremity. There is an amendment to Article 2 which will allow technologists to reinstate certificates on inactive status after three years if continuing education requirements for renewal are met. Presently the rules require anyone who has not practiced for

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more than three years to successfully complete a certification examination even if their certificate is in inactive status. Article 4 is amended to increase the maximum length of time for schools of practical technology in radiology. Currently schools of practical technology in radiology must complete the course of training in six to nine months. This time-frame is restrictive and could prevent graduates of out of state schools from obtaining certification in Arizona even though the length of the school exceeds the requirement for Arizona practical technology in radiology schools.

6. **A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

7. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

8. **The preliminary summary of the economic, small business, and consumer impact:**

This rulemaking brings certification of nuclear medicine technologists into compliance with the requirements set forth in A.R.S. § 32-2801 et seq. They also allow training of individuals performing bone mineral densitometry of the extremities to be completed without the individual attending a formal training program of at least six to ten months. The Board will incur costs to write, review, and process the rules through the promulgation and amend the current application form to reflect the new rules. The costs to the certificate holders and facilities will be minimal with an average application fee of \$30 due to prorating of fees. The overall impact of the rulemaking is expected to be minimal, with the benefits of the rulemaking outweighing the costs.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Interested persons may contact the rules analyst listed in item #4 regarding the economic, small business, and consumer impact statement.

10. **The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

No public hearing is planned for this rulemaking. Oral comments or a request for a public hearing may be made Monday through Friday, 8:00 a.m. to 5:00 p.m., at the phone number in item #4. Written comments may also be sent to the address in item #4.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

12. **Incorporations by reference and their location in the rules:**

None

13. **The full text of the rules follows:**

TITLE 12. NATURAL RESOURCES

CHAPTER 2. RADIATION REGULATORY AGENCY  
MEDICAL RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section

R12-2-101. Definitions

ARTICLE 4. SCHOOLS OF PRACTICAL RADIOLOGIC TECHNOLOGY

Section

R12-2-401. Course Time-frames

**ARTICLE 5. NUCLEAR MEDICINE TECHNOLOGIST CERTIFICATION**

Section

R12-2-501. Definitions

R12-2-502. Use of Title

R12-2-503. Display of Certificate

R12-2-504. Application for Approval of School Nuclear Medicine Technology

R12-2-505. Standards for Schools of Nuclear Medicine Technology; Approved Schools of Nuclear Medicine Technology  
R12-2-506. Grandfather Clause

**ARTICLE 6. PRACTICAL TECHNOLOGIST IN RADIOLOGY**  
**BONE DENSITOMETRY CERTIFICATION**

Section

R12-2-601. Definitions  
R12-2-602. Certificate Granting Bodies  
R12-2-603. Prohibitions and Limitations  
R12-2-604. Education  
R12-2-605. Instructors

**ARTICLE 1. GENERAL PROVISIONS**

**R12-2-101. Definitions**

The definitions in A.R.S. § 32-2801 apply to this Article. In addition, the terms in this Chapter have the following meaning, unless the context otherwise requires:

“Assistance” means any activity except the following: Positioning of the patient and x-ray tube, selecting technical settings, and exposing a patient to x-rays.

“Certification” means the process by which the Board grants permission and recognition to an individual to engage in radiologic technology upon finding the individual has met the qualifications specified by statute and rule.

“Chest radiography” means radiography performed to visualize the heart and lungs only.

“Contrast media” means material intentionally administered to the human body to define a part or parts that are not normally radiographically visible.

“Diagnostic application” means the use of ionizing radiation for diagnostic purposes, including but not limited to, measuring and positioning patients or human tissue, selecting technical settings on x-ray equipment, and making x-ray exposures.

“Extremity” means the shoulder girdle lower 2/3 of the humerus distally to the phalanges and the lower 2/3 of the femur ~~distally~~ to the phalanges.

“Foot” means the distal part of the human leg upon which an individual stands and walks.

“Practical radiologic technologist” for purposes of this Chapter is equivalent to “practical technologist in radiology”; however, this title is further defined as a person authorized to use radiography, not including fluoroscopy and the use of contrast media, and limited to the chest and extremities, on humans, at the direction of a licensed practitioner; unless

The person is certified as a practical radiologic technologist in podiatry, in which case the person is limited to radiography of the foot and leg; or

The person is certified as an “unlimited” practical radiologic technologist, in which case the person is not limited to radiography of the body areas in this definition.

“Practical radiologic technologist in podiatry” for purposes of this Chapter is equivalent to “practical technologist in podiatry.”

“Practical radiologic technology” means radiography limited to the chest or extremities and not including the use of fluoroscopy and the use of contrast media. For purposes of this Chapter “practical radiologic technology” is equivalent to “practical technology in radiology.”

“Radiograph” means the record of images which represents anatomical details of the part radiographically examined and is formed by the differential absorption of ionizing radiation within the part.

“Radiography” means the use of ionizing radiation in making radiographs.

“Special permit” means a certificate issued by the Board exempting an individual from the specific provisions of A.R.S. §§ 32-2802 through 32-2813.

“Specific direction” means the application of x-radiation to a specific area of the human body for diagnostic purposes while under the specific supervision of a licensed practitioner.

“Temporary certificate” means a certificate issued by the Board to any person who has completed a training program approved by the Board and whose certification is pending.

“Therapeutic application” means the use of ionizing radiation including, but not limited to, setting up the treatment position, delivering the required dose prescribed by the physician, certifying the record of the technical details of the treatment, selecting the required filter and treatment distance, making beam directional shells and molds, using diagnostic x-ray equipment for tumor localization, assisting the physicist in calibration procedure, and assisting in treatment planning procedures. Therapeutic application does not include taking x-rays for diagnostic purposes.

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“Therapeutic purpose” means the use of x-radiation to treat human disease.

“X-radiation” means penetrating electromagnetic radiation with wave-lengths shorter than those of visible light that is usually produced by bombarding a metallic target with fast electrons in a high vacuum, creating photons that originate from the extranuclear part of the atom.

**ARTICLE 4. SCHOOLS OF PRACTICAL RADIOLOGIC TECHNOLOGY**

**R12-2-401. Course Time-frames**

The time-frame for the course of study shall not be less than six months or more than 9 24 months for completion of 210 hours of didactic training and 480 hours clinical training.

**ARTICLE 5. NUCLEAR MEDICINE TECHNOLOGIST CERTIFICATION**

**R12-2-501. Definitions**

“ARRT” means the American Registry of Radiologic Technologists.

“ASCP” means the American Society of Clinical Pathology.

“Authorized User” means a physician licensed in Arizona to practice medicine and who is identified as:

An authorized user on an Agency, Nuclear Regulatory Commission (NRC), or Agreement State license that authorizes the specified medical use; or

A user in a medical use broad scope program, licensed by the Agency, NRC or Agreement State to select its own authorized users.

“Brachytherapy” means a method of radiation therapy in which a sealed source or group of sealed sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary, intraluminal, or interstitial application.

“Certification” means the process by which the Board grants permission and recognition to an individual to engage in nuclear medicine technology upon finding the individual has met the qualifications specified by statute and rule.

“Certified Nuclear Medicine Technologist” means a person certified and/or registered by the American Registry of Radiologic Technologists, the Nuclear Medicine Technology Certification Board, the American Society of Clinical Pathologists, or the Arizona Medical Radiologic Technology Board, other than a licensed practitioner, who performs in vitro detection and measurement of radioactivity and who may perform the administration of radiopharmaceuticals to human beings for diagnostic and therapeutic purposes and with Board approved training may perform the CT portion of a PET/CT scan while under the supervision of a licensed practitioner who is an Authorized User.

“Diagnostic Dosage” means a radionuclide or radiopharmaceutical, which is intended for diagnostic purposes.

“Medical use” means the intentional internal or external administration of byproduct material or the radiation from byproduct material to patients or human research subjects under the supervision of an authorized user.

“Misadministration” means:

The administration of a radiopharmaceutical or the radiation from a sealed source, administered for therapy purposes and involving:

The wrong radiopharmaceutical or sealed source; or

The wrong patient; or

The wrong route of administration; or

A dosage to an individual that differs from the prescribed dosage by 20%; or

The administration of a diagnostic dosage of a radiopharmaceutical involving:

The wrong patient; or

The wrong radiopharmaceutical; or

The wrong route of administration; and

A dosage to an individual that exceeds 5 rems effective dose equivalent or 50 rems dosage equivalent to any individual organ; or

A therapeutic radiation dose from a sealed source such that errors in the source calibration, time of exposure, and treatment geometry result in a calculated total treatment dose differing from the final, prescribed total treatment dose by more than 10 percent.

“NMTCB” means the Nuclear Medicine Technology Certification Board.

“Radionuclide” means a radioactive element or a radioactive isotope.

“Radiopharmaceutical” means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of any such substance.

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“Radiopharmaceutical” means a radionuclide or a radionuclide compound designed and prepared for administration to human beings.

“Supervision”

“Direct Supervision” means guidance, direction, and instruction by an authorized user who is personally aware of, and maintains independent professional responsibility for the procedure intended for a given patient, and is present in the facility and is available for immediate assistance.

“General Supervision” means supervised by an authorized user who is available but not necessarily within the individuals place of employment.

“Immediate Supervision” means in room presence for instruction, direction and guidance by an authorized medical user who is available to assume control of the given procedure.

“Therapeutic dose” means a radionuclide or radiopharmaceutical, which is intended for therapeutic purposes.

**R12-2-502. Use of Title**

A person holding a certificate may use the title “nuclear medicine technologist.” No other person shall be entitled to use such title or letters after such person’s name that indicates or implies that such person is a certified technologist or to represent himself in any way, whether orally or in writing, expressly or by implication, as being so certified.

**R12-2-503. Display of Certificate**

Every technologist, including part-time and technologists staffed through temporary employment agencies or services, shall display proof of certification by the Arizona MRTBE.

**R12-2-504. Application for Approval of School Nuclear Medicine Technology**

**A.** An applicant seeking approval for a nuclear medicine school shall apply by letter and shall address all of the concerns for school approval as required in R12-2-505.

**B.** The Board shall review a school application in a timely manner as required in R12-2-301 and approve or deny the application.

**R12-2-505. Standards for Schools of Nuclear Medicine Technology; Approved Schools of Nuclear Medicine Technology**

The Board may approve a school of nuclear medicine technology as maintaining a satisfactory standard if its course of study:

- 1.** Is for a period not less than twelve months of full-time study or the equivalent and is accredited by the Joint Review Committee on Education in Nuclear Medicine or meets or exceeds the standards of the Joint Review Committee on Education in Nuclear Medicine as determined by the Board.
- 2.** Includes not less than 1900 contact hours including but not limited to: methods of patient care, radiation safety and protection, nuclear medicine physics and radiation physics, nuclear instrumentation, statistics, radionuclide chemistry and radiopharmacy, departmental organization and function, radiation biology, nuclear medicine in-vivo and in-vitro procedures, radionuclide therapy, computer application, clinical education, and medical law and ethics.
- 3.** The Board shall maintain a list of approved schools.

**R12-2-506. Grandfather Clause**

**A.** Individuals practicing nuclear medicine who are not eligible for certification by the Board may apply for a temporary certificate as provided in A.R.S. § 32-2814(C) and (D).

**B.** Individuals not eligible for certification by the Board shall pass a certification examination approved by the Board no later than December 31, 2004.

**C.** Effective January 1, 2005 all applicants for certification must provide proof of current certification by a certifying body approved by the Board.

**D.** Effective January 1, 2005, applicants who are not certified by a certifying body approved by the Board but who meet the educational requirements to sit for a certification examination administered by a certifying body approved by the Board may apply to take a certification examination approved by the Board.

**ARTICLE 6. PRACTICAL TECHNOLOGIST IN RADIOLOGY**  
**BONE DENSITOMETRY CERTIFICATION**

**R12-2-601. Definitions**

“Practical radiologic technologist in bone densitometry” for the purposes of this Chapter is equivalent to “practical technologist in radiology in bone mineral densitometry”; however, this title is further defined as a person authorized to perform a bone mineral densitometry limited to the extremities.

**R12-2-602. Certificate Granting Bodies**

The Board shall maintain a list of approved certificate granting bodies in the field of bone mineral densitometry.

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**R12-2-603. Prohibitions and Limitations**

The practical radiologic technologist in bone densitometry certificate authorizes the practical radiologic technologist in bone densitometry to perform only densitometry of the extremities as defined in R12-2-101.

**R12-2-604. Education**

The following subjects shall require no less than 80 hours of instruction:

Radiation Safety, Conventions in Densitometry, Densitometry Techniques, Anatomy,  
Precision and Accuracy, Quality Control, Osteoporosis Overview, Understanding Data.

**R12-2-605. Instructors**

Instructors must be certified by the Board or a certifying agency approved by the Board or its equivalent.

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**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER POLLUTION CONTROL**

**PREAMBLE**

**1. Sections Affected**

R18-9-A901  
R18-9-A902  
R18-9-A905  
R18-9-A907  
R18-9-C901  
R18-9-C905  
Article 9, Part D  
R18-9-D901  
R18-9-D902  
R18-9-D903  
R18-9-D904  
R18-9-D905

**Rulemaking Action**

Amend  
Amend  
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New Section  
New Part  
New Section  
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New Section  
New Section  
New Section

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 49-203 and 49-255.01(B)

Implementing statute: A.R.S. § 49-255.01

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 4014, September 12, 2003

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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**5. An explanation of the rules, including the agency's reasons for initiating the rules:**

This rulemaking amends Arizona Administrative Code (A.A.C.) Title 18, Chapter 9, Article 9, to conform with revisions to the federal National Pollutant Discharge Elimination System (NPDES) program. Since December 2002, the Arizona Department of Environmental Quality (Department) has administered the Arizona Pollutant Discharge Elimination System (AZPDES) program as an approved NPDES program for discharges to surface waters within Arizona, but not in Indian Country. In response to revisions that the Environmental Protection Agency (EPA) makes to the NPDES program and to maintain adequate permit and enforcement authority, the Department must make changes to its AZPDES program. (See 40 Code of Federal Regulations (CFR) 123.62(e))

The revisions in this rulemaking address the February 12, 2003 revisions to EPA regulations governing the Animal Feeding Operation/Concentrated Animal Feeding Operation (AFO/CAFO) industry. The Department is obligated to make the rule changes within one year of the date that the federal regulations are promulgated or by February 12, 2004.

In addition, this rulemaking updates the regulations that are incorporated by reference and makes minor changes to other parts of the rule.

A Section-by-Section analysis of the revisions follows:

**R18-9-A901. Definitions.**

Definitions for “animal confinement area,” “CAFO,” “land application area,” “large concentrated animal feeding operation,” “manure,” “manure storage area,” “medium concentrated animal feeding operation,” “process wastewater,” “production area,” “raw materials storage area,” and “waste containment area” have been added in response to the revised CAFO regulation. EPA’s definition of “production area” includes the terms “animal confinement area,” “manure storage area,” “raw materials storage area,” and “waste containment area.” In this rulemaking, ADEQ chose to define these terms separately for clarity.

The definition for “animal unit” was deleted from the rule because the term is no longer used. The term “concentrated animal feeding operation” was changed to “CAFO” and the definition was revised to conform to the first part of the definition at 40 CFR 122.23(b)(2).

The definition of “discharge of a pollutant” was amended to replace the term “indirect discharger” with “industrial user.” The current language of the definition matches the federal definition. The federal regulations include a definition of “indirect discharger.” AZPDES statutes define the term “indirect discharge” and “industrial user” (A.R.S. § 49-255(3) and (4)), not “indirect discharger.” Because the intent of the rule is to exclude the discharge of pollutants to publicly owned treatment works, the term “industrial user” is the proper term. The exclusion does not apply to sources of pollutants to a municipal separate storm sewer system (MS4).

The definition of “individual permit” was amended to reflect the fact that an individual permit may also include an AZPDES permit for an MS4. An MS4 is not a single point source or a single facility.

The definition of “small municipal separate storm sewer system” was amended to correct the citation within R18-9-A901(35)(b). The citation should have been R18-9-A902(D)(2) instead of R18-9-C902(A)(1)(g) to comply with 40 CFR 122.26(a)(1)(v).

Minor corrections were made to the definitions for: “animal feeding operation,” “large municipal separate storm sewer system” and “medium municipal separate storm sewer system.”

**R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions.**

Subsection (B)(2) was deleted. The language contained in that subsection was moved to the new Section R18-9-D901. CAFO Designations.

Subsection (B)(9)(a) (proposed as subsection (B)(8)(a)) was amended to add a reference to the definition of the term “stormwater discharge associated with industrial activity” that is defined at 40 CFR 122.26(b)(14), which is incorporated by reference in R18-9-A905(A)(1)(d). In addition, to link the “no exposure exclusion” more closely with this provision, the Department proposes to move the language in subsection (H)(1) to this subsection. The language in subsection (H)(2) is not needed because it is defined in 40 CFR 122.26(g), which is incorporated by reference in R18-9-A905(A)(1)(d) also.

Subsections (B)(9)(c) and (d) (proposed as subsections (B)(8)(c) and (d)) were combined and part of the text in subsection (B)(9)(d) (proposed as subsection (B)(8)(d)) was deleted to eliminate unnecessary language because the March 10, 2003 deadline is passed.

Subsection (D)(1) was amended to state that the Department may designate a small MS4 that has a population density less than 1,000 people or a population of less than 10,000 as specified in 40 CFR 123.35.

Subsection (D)(3) was added so that there is a clear link to the language in 40 CFR 123.35(b)(4). The Department’s authority to designate small MS4s in this way is currently based on the language in R18-9-A902(D)(1).

Subsection (E) was amended to explicitly state that the Department may designate a small MS4 in response to a petition. The petition may be submitted based on 40 CFR 122.26(b)(16) and 40 CFR 122.26(b)(4) that are incorporated by reference in R18-9-A905(A)(1)(d). The Department will make a final decision on the petitions as described in 40 CFR 122.26(f)(5), which is incorporated by reference in R18-9-A905(A)(1)(d).

Subsection (F) was deleted to eliminate unnecessary language now that the deadline for phasing in requirements for small MS4 is passed. ADEQ did not use a phase-in approach for small MS4s.

Subsection (H) was deleted because the provisions were addressed in other parts of the rule. The text of subsection (H)(1) was moved to subsection (B)(8)(a). The text of subsection (H)(2) is not needed because those terms are defined in 40 CFR 122.26(g), which is incorporated by reference at R18-9-A905(A)(1)(d).

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**R18-9-A905. AZPDES Program Standards.**

Subsection (A) has been amended to incorporate by reference the July 1, 2003 version of the applicable federal regulations listed in R18-9-A905(A). EPA has made several revisions to the applicable federal regulations since July 1, 2001 and therefore the Department reference needs to be updated. Table 1 contains the regulations that are incorporated by reference in this subsection and that were revised by EPA since July 1, 2001.

Table 1 NPDES Regulations Revised since July 1, 2001 that are incorporated by reference in the AZPDES Rules (R18-9-A905)		
Citation from Code of Federal Regulations	Topic	Federal Register Citation
40 CFR 122.21(i) - revised.	Application requirements for CAFOs.	68 <b>FR</b> 7716, February 12, 2003
40 CFR 122.21(r) - added.	Application requirements for new facilities with cooling water intake structures.	66 <b>FR</b> 65337, December 18, 2001
40 CFR 122.26(e)(8) - revised (date).	Postpone deadline for stormwater permit coverage for oil and gas construction activity that disturbs one to five acres of land.	68 <b>FR</b> 11325, March 10, 2003
40 CFR 122.42(e) - revised.	Permit conditions for CAFOs.	68 <b>FR</b> 7716, February 12, 2003
40 CFR 122.44(b)(3) - added.	Permit conditions for new facilities with cooling water intake structures.	66 <b>FR</b> 65337, December 18, 2001
40 CFR 125 - revised.	Requirements for new facilities with cooling water intake structures.	66 <b>FR</b> 65337, December 18, 2001 and 68 <b>FR</b> 36749, June 19, 2003
40 CFR 136.3, Table IA - revised.	List of Approved Biological Methods	67 <b>FR</b> 69952, November 19, 2002
40 CFR 412 - revised.	CAFO effluent limitations guidelines.	68 <b>FR</b> 7716, February 12, 2003
40 CFR 420 - revised.	Iron and Steel Manufacturing effluent limitations guidelines.	67 <b>FR</b> 64215, October 17, 2002
40 CFR 430 - revised.	Pulp, Paper, and Paperboard effluent limitations guidelines.	67 <b>FR</b> 58990, September 19, 2002
40 CFR 434 - revised.	Coal Mining effluent limitations guidelines.	67 <b>FR</b> 3370, January 23, 2002
40 CFR 438 - added.	Metal Products and Machinery effluent limitations guidelines.	68 <b>FR</b> 25686, May 13, 2003
40 CFR 439 - revised.	Pharmaceutical Manufacturing effluent limitations guidelines.	68 <b>FR</b> 12265, March 13, 2003 amended by 68 <b>FR</b> 34831, June 11, 2003

Subsection (A)(4) has been amended to include a reference to Subpart I of 40 CFR 125 that was promulgated by EPA on December 18, 2001.

Subsection (A)(7) has been added to incorporate the list of approved test procedures specified in the federal regulations under 40 CFR 136. The specific reasons for including this reference in rule are described along with the changes for subsection (B).

The remaining subsections within subsection (A) were renumbered to conform.

Subsection (B) has been amended to specify which test procedures must be used for monitoring requirements within the AZPDES program. The current language references 9 A.A.C. 14, Article 6. This Article is developed by the Arizona Department of Health Services (ADHS) which is responsible for approving laboratory test procedures and licensure procedures. 9 A.A.C. 14, Article 6 contains a listing of the approved test procedures for all media programs (air, solid waste, drinking water, wastewater, hazardous waste) and processes for approving alternative test procedures.

The NPDES regulations governing test procedures are described at 40 CFR 136. Federal provisions that are currently incorporated by reference in the AZPDES rules require that 40 CFR 136 approved test procedures are used. 40 CFR 122.41(j)(4), which is incorporated by reference at R18-9-A905(A)(3)(a), requires that:

*(j) Monitoring and records. ...*

*(4) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.*

In addition, 40 CFR 122.44(i)(1)(iv), which is incorporated by reference at R18-9-A905(A)(3)(d), requires that:



*“(i) Monitoring requirements. In addition to § 122.48, the following monitoring requirements:*

*(1) To assure compliance with permit limitations, requirements to monitor:...*

*(iv) According to test procedures approved under 40 CFR part 136 for the analyses of pollutants having approved methods under that part, and according to a test procedure specified in the permit for pollutants with no approved methods.”*

Therefore to the extent that the test procedures approved under R9-14-612 are also approved under 40 CFR 136, then the current approach is consistent. The Department acknowledges that R9-14-612 incorporates most of the 40 CFR 136 test procedures. However, at this time, the universe of test procedures approved under R9-14-612 does not entirely overlap with test procedures approved under 40 CFR 136. In addition, for some parameters, R9-14-612 includes test procedures that are not contained in 40 CFR 136. To make this rule consistent with the federal regulation, the Department proposes to incorporate 40 CFR 136 by reference in subsection (A) and to modify subsection (B) to state that a person shall use a test procedure that is approved under 40 CFR 136 with some exceptions.

Subsection (B)(1) was added to specify that if no test procedure has been approved for a pollutant under 40 CFR 136, then the person may select a test procedure that is approved under R9-14-612. These test procedures would not have to be specified in the permit.

Subsection (B)(2) was added to state that the Department has the authority to specify, within an AZPDES permit, the use of a test procedure. In this scenario, the Department will explain the use of the test procedure in the public notice for the draft permit.

For any test procedure that is not approved under R9-14-612, R9-14-610(B) specifies the process for a laboratory to petition the ADHS for approval of a different test procedure required by EPA or ADEQ. To assist with providing as much time as possible for all people involved with the ADHS test procedure approval process, the Department routinely provides the permittee with notice about the requirement during the informal pre-public notice review stage and also officially during the formal comment period. This time period (more than six weeks) should give various laboratories enough time to petition ADHS.

Subsection (B)(3) was added to specify the test procedures promulgated to be used for whole effluent toxicity testing. EPA promulgated revisions to these test procedures at 67 **FR** 69952, November 19, 2002. The ADHS rules do not reflect the current EPA versions, therefore, the Department will specify the requirement in the AZPDES rules to explicitly state that the updated WET procedures must be used. The Department has the authority to adopt such rules based on the authority in A.R.S. §§ 49-203 and 49-255.01. According to A.R.S. § 49-255.01(C)(2) and (C)(4), the rules adopted by the Directors shall provide for:

“2. Establishment of permit conditions, discharge limitations and standards of performance as prescribed by Section 49-203, Subsection A, Paragraph 7....

4. Other provisions necessary for maintaining state program authority under Section 402(b) of the clean water act.”

A.R.S. § 49-203(A)(7) states that the Director shall:

“Adopt, by rule or as permit conditions, such discharge limitations, ...and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.”

A.R.S. § 49-203(A)(2) states that the Director shall:

“Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act...and as prescribed by article 3.1 of this chapter.”

The Department has the authority and the obligation to develop rules that are sufficient to adopt permit conditions and other conditions so as to enable this state to administer the permit program.

Section 304(h) requires EPA to “promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided for...permit applications pursuant to section 402 of this Act.” In addition, the EPA made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR 122.21, 122.41, 122.44, and 123.25).

The Department acknowledges that the ADHS has the authority to specify test procedures and to license laboratories. The Department is not duplicating this authority. Instead, the Department is implementing restrictions on which test procedures may be used under the AZPDES program to maintain consistency with the federal program. This position is supported by language in A.R.S. § 36-495.01(B) which states:

*“(B)...The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with title 49 and rules administered or enforced by the director of environmental quality.”*

In summary, the Department has the authority to require the use of these test procedures for the following reasons:

1. 40 CFR 136 test procedures are the preferred test procedures for NPDES compliance.
2. The ADHS rules contain references to outdated test procedures.
3. ADHS has specified a process within its rules to deal with test procedures that may be required by EPA or ADEQ. R9-14-610(B) allows a licensee to petition ADHS to approve the use of a new alternate method or a method alternation if “a different method or method alteration is required or authorized by an EPA or ADEQ statute or rule,...” Once approved, the approved different method becomes an approved method under R9-14-612.
4. The AZPDES program is required to be consistent with but no more stringent than the Clean Water Act (CWA). Adopting these updated methodologies is necessary to maintain consistency.

**R18-9-A907. Public Notice.**

Subsection (A)(1)(g) is amended to require that the Department include a statement about the thermal component of the discharge in a public notice only when the source is subject to Section 316(a) of the CWA.

Subsection (A)(1)(h) is amended to include language to be consistent with 40 CFR 124.10(d)(ix). That section of federal regulation was promulgated as part of the rulemaking for 40 CFR 125, Subpart I for Cooling Water Intake Structures (66 FR 65338, December 18, 2001).

**R18-9-C901. General Permit Issuance.**

Subsection (C)(1)(f) is amended to replace “concentrated animal feeding operation” with “CAFO” to conform to its use in the rest of the rulemaking.

Subsection (C)(1)(h) is amended to remove unnecessary language because the deadline for submission of a Notice of Intent (NOI) is specified in the general permit. The provision originally only applied to discharges from small construction activity because a discharge associated with large construction activity is covered under R18-9-C901(C)(1)(e) “stormwater discharges associated with industrial activity” as defined in 40 CFR 122.26(b)(14)(x). Although this connection for large construction activity is consistent with the federal program, it is not immediately clear that large construction activities are also covered by this subsection. Therefore, for clarification, the Department also deleted the word “small” in this subsection so that the provision explicitly covers discharges from both large and small construction activities.

Subsection (D)(6) was added to include a requirement for the applicant to submit the “latitude and longitude of the facility” when applying for coverage under a general permit. This type of information is needed for the Department’s database of applicants. In most cases, the Department will require the latitude and longitude of the discharge outfall or outfalls. In some cases, the Department may require the latitude and longitude of the center of the operation. The Department will specify the requirements within each general permit.

Subsection (D)(7) was added to include a requirement for CAFOs to submit information specified in 40 CFR 122.21(i)(1) and a topographic map. The Department proposes this revision to comply with 40 CFR 122.28(b)(2)(ii).

**R18-9-C905. General Permit Modification and Revocation and Reissuance**

Subsection (A) was added to clearly state that the Department has the authority to modify or revoke and reissue a general permit. These processes are governed by 40 CFR 122.62(a) and (b) which are incorporated by reference in R18-9-A905(A)(1)(j).

Subsection (B) was added to describe the process that the Department must follow in order to modify or revoke and reissue a general permit. The Department must follow the public notice provisions in R18-9-A907(B) and the public participation/EPA review provisions in R18-9-A908.

**Part D. Animal Feeding Operations and Concentrated Animal Feeding Operations.** Part D was added to 18 A.A.C. 9, Article 9 to comply with the revised regulations for AFOs and CAFOs at 40 CFR 122.23. This part applies to CAFOs that operate even if there is no discharge from the operation. Based on EPA regulations in effect before April 14, 2003, an operation did not meet the definition of a CAFO unless it met the numbers and also had the potential to discharge in response to storm events that were less than the 25-year, 24-hour storm. The revisions to the EPA program took away this exclusion and thus all operations that meet the new definition of CAFO have a duty to comply with these requirements.

Also, in accordance with 40 CFR 123.36 and 40 CFR 412(c)(2), the Department will specify the technical standards within the general permit for CAFOs instead of doing so within this rulemaking. The Department generally intends to use as the basis for the technical standards required by 40 CFR 123.36 and 40 CFR 412.4(c)(2), the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG).

**R18-9-D901. CAFO Designations.**

Subsections (A) through (D) were added to comply with 40 CFR 122.23(b)(2), 122.23(c)(1)(i), 122.23(c)(2), and 122.23(c)(3). This language exists currently in R18-9-A902(B)(2). In designating an AFO as a CAFO, the Department must follow the provisions in R18-9-D901. The Department must consider the factors listed in R18-9-D901(B)

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to determine whether an AFO with less than the number of animals listed in the definition of “medium CAFO” is a significant contributor of pollutants to a navigable water. In addition, R18-9-D901(D) prohibits the Department from designating an AFO as a CAFO unless pollutants are discharged:

1. *Into a navigable water through a manmade ditch, flushing system, or other similar manmade device; or*
2. *Directly into a navigable water that originates outside of the facility and passes over, across, or through the facility or otherwise comes into direct contact with the animals confined in the operation.*

To avoid confusion, the Department wishes to clarify for the readers that “navigable water” means “the waters of the United States as defined by § 502(7) of the clean water act (33 United States Code § 1362(7)).” (A.R.S. § 49-201(21)). Section 502(7) of the CWA defines “navigable waters” as the “waters of the United States, including the territorial seas.” The Arizona Attorney General Statement for the AZPDES program (signed July 11, 2002, page 26) explains: “Since ‘waters of the United States’ is defined not in the federal statute but in the implementing federal regulations, see 40 CFR 122.2, the State law definition is interpreted to encompass the substance of the federal regulatory definition. An example of this interpretation is found in the ADEQ rules that establish water quality standards for surface waters.” A.A.C. R18-11-101(43) includes the following definition:

“‘Surface water’ means a water of the United States and includes the following:

- a. *All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;*
- b. *All interstate waters, including interstate wetlands;*
- c. *All other waters such as intrastate lakes, reservoirs, natural ponds, rivers, streams (including intermittent and ephemeral streams), creeks, washes, draws, mudflats, sandflats, wetlands, sloughs, backwaters, prairie potholes, wet meadows, or playa lakes, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:*
  - i. *Which are or could be used by interstate or foreign travelers for recreational or other purposes;*
  - ii. *From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or*
  - iii. *Which are used or could be used for industrial purposes by industries in interstate or foreign commerce;*
- d. *All impoundments of waters otherwise defined as surface waters under this definition;*
- e. *Tributaries of surface waters identified in paragraphs (a) through (d) of this definition; and*
- f. *Wetlands adjacent to surface waters identified in paragraphs (a) through (e) of this definition.”*

The Department will determine if an AFO is a “significant contributor of pollutants to a navigable water” on a case-by-case basis, consistent with the federal program. To designate an AFO as a significant contributor, the Department will evaluate, at a minimum, the factors listed in R18-9-D901(B)(1) through R18-9-D901(B)(5). The Department will evaluate the amount of pollutants from the operation, the amount of pollutants from other operations and the site-specific characteristics of the navigable water including its designated use.

Subsection (E) was added to require that, when the Department designates an AFO as a CAFO, the Department will notify the owner or operator, in writing, of the designation.

**R18-9-D902. AZPDES Permit Coverage Requirements.**

Subsections (A) and (B) were added to comply with 40 CFR 122.23(d). Any AFO that meets the definition of a “CAFO” under R18-9-A901(6) must comply with the requirements in this Part. If an AFO is designated as a CAFO under R18-9-D901, then the owner or operator must apply for permit coverage, either under an individual or a general permit, by the deadline specified in R18-9-D904(A). If a general permit is not available, the CAFO must apply for an individual permit by the applicable deadline. The Department anticipates that it will develop a new general permit for CAFOs shortly after this rulemaking is promulgated.

Subsection (C) was added to comply with 40 CFR 122.23(e). The provision requires that a CAFO must obtain permit coverage for a discharge of manure, litter or process wastewater to land areas under the CAFO’s control unless the discharge can meet the definition of “agricultural stormwater discharge.” A definition of “agricultural stormwater discharge” is included in the provision. In some cases, the manure, litter or process wastewater from the CAFO will be land applied off of the CAFO site, possibly outside of the control of the CAFO. The Department expects that the owner or operator of the CAFO will include in its nutrient management plan an evaluation of all the manure, litter, or process wastewater produced by the CAFO that will be disposed or used. In addition, the Department wants to remind the CAFO owner or operator that the application of materials considered to be nitrogen fertilizer are subject to an agricultural general permit under the Aquifer Protection Permit (APP) program (R18-9-402, APP General Permits: Nitrogen Fertilizers). The CAFO also must comply with A.A.C. R18-9-403, APP General Permits: Concentrated Animal Feeding Operations.

**R18-9-D903. No Potential to Discharge Determination for Large CAFOs.**

This Section was added to comply with 40 CFR 122.23(f). EPA provided a means for a large CAFO to demonstrate that the operation has no potential to discharge. If a large CAFO successfully demonstrates that the operation has no potential for discharge, then the person who owns or operates that operation does not need to apply for coverage under an AZPDES permit.

If a large CAFO for which the Department determined has “no potential to discharge” ceases operations, the large CAFO is still responsible for ensuring that any manure, litter, or process wastewater that was generated by the operation is not discharged to a navigable water after the operation ceases. In other words, the owner or operator of the CAFO must close the facility in such a way that there will be no discharge of manure, litter or process wastewater generated by the CAFO. If there is a potential to discharge after the operation ceases, the person who owns or operates the facility must apply for permit coverage at that time.

**R18-9-D904. AZPDES Permit Coverage Deadlines.**

This Section was added to comply with 40 CFR 122.23(g) and (h). The EPA regulation revisions for CAFOs were promulgated on February 12, 2003 and became effective on April 14, 2003. Thus, EPA deadlines are based on the April 14, 2003 effective date of the regulation. The Department anticipates that the AZPDES rule revisions will become effective in February 2004, nearly eight months after the EPA regulation. The Department finds it confusing to reference the April 14, 2003 deadline throughout this Section of the AZPDES rules. To reduce the confusion and to maintain consistency with the federal deadlines, the Department formatted the requirements as follows:

- Subsection (A)(1) addresses requirements for AFOs existing before April 14, 2003.
- Subsection (A)(2) addresses requirements for AFOs constructed after April 14, 2003 that meet the definition of CAFO.
- Subsection (A)(3) addresses requirements for designated CAFOs.

In addition, for clarity, the Department uses the effective date of the rule as the reference point for the new definition of CAFO instead of April 14, 2003. The Department has analyzed this change and added some language in some subsections so that rule is practically the same as the federal regulations. Because of the gap in implementation, it is impossible for the Department to duplicate the federal deadline requirements exactly. In addition to the explanation provided below, the Department provides a breakdown of various scenarios and the applicable deadline requirement in Table 2.

Subsection (A)(1)(a) states that the owner or operator of an AFO existing before April 14, 2003 and defined as a CAFO before that time must maintain permit coverage for the operation. EPA did not grant any additional time for seeking permit coverage for those operations that were subject to the federal program before April 14, 2003. These types of operations that existed in Arizona should have sought coverage under the existing general permit for CAFOs (AZG800000) or submitted an application for an individual permit. ADEQ proposes similar language. For clarification, the EPA definition of CAFO that applied before April 14, 2003 from 40 CFR Part 122, Appendix B was:

*“An animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if either of the following criteria are met.*

*(a) More than the numbers of animals specified in any of the following categories are confined:*

- (1) 1,000 slaughter and feeder cattle,*
- (2) 700 mature dairy cattle (whether milked or dry cows),*
- (3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),*
- (4) 500 horses,*
- (5) 10,000 sheep or lambs,*
- (6) 55,000 turkeys,*
- (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),*
- (8) 30,000 laying hens or broilers (if the facility has a liquid manure system),*
- (9) 5,000 ducks, or*
- (10) 1,000 animal units; or*

*(b) More than the following number and types of animals are confined:*

- (1) 300 slaughter or feeder cattle,*
- (2) 200 mature dairy cattle (whether milked or dry cows),*
- (3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),*
- (4) 150 horses,*

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- (5) 3,000 sheep or lambs,
- (6) 16,500 turkeys,
- (7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),
- (9) 1,500 ducks, or
- (10) 300 animal units;

*and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.*

*Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event."*

Before April 14, 2003, under the EPA program, for an operation that met the numbers in (a) or the numbers and condition of (b), if the operation had proper containment to handle the flow so there would be no discharge from storm events up to the 25-year, 24-hour storm event, then the operation DID NOT meet the definition of CAFO and didn't need to be covered by the permit. If the numbers were met, and the operation did not have structures in place to contain flow from storm events up to the 25-year, 24-hour storm, then the operation was subject to the regulations and should have applied for permit coverage. At 68 **FR** 7205, February 12, 2003, EPA states:

*"In particular, EPA notes that those operations that previously met the criteria for being a CAFO, but who erroneously claimed the 25-year, 24-hour storm exemption and avoided applying for an NPDES permit on that basis, continue to be in violation of the regulations and need to immediately apply for NPDES permit coverage. Today's rule also does not extend the date by which operations that have previously been designated as a CAFO should have applied for an NPDES permit."*

If the Department develops a new general permit for CAFOs, the owner or operator of the CAFO subject to the existing general permit may apply for coverage under the new general permit, but the owner or operator must ensure there is continual permit coverage for the operation.

The Department realizes that there may be some AFOs that existed before April 14, 2003 but will become a CAFO between April 14, 2003 and the effective date of this rule revision (e.g. increase in the number of animals without proper containment for events up to 25-year, 24-hour storm event). Those operations are subject to the current rules and therefore must apply for permit coverage. In accordance with Section III.B.3. of the existing CAFO general permit, the completed NOI (and other pertinent information) is due 90 days before the operation becomes a CAFO. The Department expects that the owner or operator for those operations seek coverage under the existing general permit or apply for an individual permit using AZPDES application Forms 1 and 2B in accordance with 40 CFR 122.21. The language in subsection (A)(1)(a) is consistent with 40 CFR 122.23(g)(1).

Subsection (A)(1)(b) covers any AFO operating before April 14, 2003 but not defined as a CAFO until the AZPDES rules are revised. The Department proposes that the owner or operator for these operations submit a permit application by a deadline specified by the permitting authority, but no later than February 13, 2006. The Department intends to specify the deadline for permit application submission for this category of CAFOs in a general permit. The Department may also notify each CAFO subject to this part individually by letter. This provision is consistent with 40 CFR 122.23(g)(2). This deadline is only available if the operation operated before April 14, 2003.

Subsection (A)(1)(c) covers an AFO existing before April 14, 2003 that changed operations after April 14, 2003 such that the operation becomes a CAFO. If the revised operations also would have been defined as a CAFO before the AZPDES rules are revised, then the operation would have been subject to the current requirements and therefore, the owner or operator must apply for or seek coverage within 90 days of the operational change. If the change would not have made the operation a CAFO as defined before the AZPDES rules are revised, then the owner or operator has until April 13, 2006 to seek permit coverage under a general permit or submit an application for an individual permit. The language in this subsection is consistent with 40 CFR 122.23(g)(3)(ii).

Subsection (A)(1)(d) addresses an AFO existing before April 14, 2003 that constructs new facilities at its operation and the new facilities meet the definition of new source. This is an inferred category due to the definition of new source, because some modifications at existing facilities could be treated as a new source pursuant to 40 CFR 122.29(b)(3), which is incorporated by reference in A.A.C. R18-9-A905(A)(e), instead of a modification of an existing facility. For the facilities that qualify as new sources, the permit application will be due at least 180 days before the new source operations commence. The Department acknowledges that some new sources, although a "new source" under the federal program might not be categorized as such under the state program when the AZPDES regulations are modified to match the federal definition. For example, the owner or operator of an AFO (existing before April 14, 2003) decides on May 1, 2003 to add more animals to the operation, to construct additional facilities to handle the wastes from the expanded operations, and to commence operation by December 1, 2003. The expanded por-

tion happens to meet the definition of a new source. The federal program requires that the application be submitted at least 180 days before new source operations commence or by June 1, 2003. If that operation commences operations in December 2003, then when the Department modifies its rules, the facility may be treated as a CAFO meeting the new definition of CAFO and thus subject to subsection (A)(1)(b) - required to submit an application by the date specified by the Director when in actuality it should have applied for permit coverage at least six months before operations started. To ensure that these facilities are treated the same as envisioned under the federal regulations, the Department proposes to add language to address the deadline for the permit application for those facilities that are new sources under the federal program, but potentially not new sources under the AZPDES program. The Department will require permit applications within 30 days of the effective date of the rule revision for operations that fall into that category. The Department believes that requiring the application within 30 days of the effective date of the rules for operations where the calculated 180-day application date was before the effective date of the rule provides adequate notice and enough time for the owner or operator of the operation to submit the application. This provision is based on 40 CFR 122.23(g)(4).

Subsection (A)(2) addresses CAFOs constructed after April 14, 2003 including those that are subject to the effluent guidelines in 40 CFR 412. The owner or operator for these facilities must submit an application or seek permit coverage at least 180 days before the operation commences. For those operations where the rules become effective after the calculated 180-day deadline for the operation, the application is due within 30 days of the effective date of the rule. The Department added the additional statement to address the gap between the date of the federal regulation and the state rule revisions. This provision is based on 40 CFR 122.23(g)(3)(i) and (g)(4).

Subsection (A)(3) addresses the application deadline for designated CAFOs. This provision is consistent with 40 CFR 122.23(g)(5).

Subsection (C) addresses when permit coverage is no longer needed. Note that permit coverage must be maintained if there is a potential to discharge any manure, litter or associated process wastewater that was generated while the operation was a CAFO even if the facility has ceased operations or it no longer meets the definition of a CAFO. Before applying for termination of coverage of an AZPDES permit, the permittee must demonstrate that there is no potential for a discharge of remaining manure, litter or process wastewater.

#### **R18-9-D905. Closure Requirements.**

This Section was added to describe what the Department expects to see in a demonstration described in R18-9-D904(C)(2)(b) and to state that the person who owns or operates a CAFO is responsible for ensuring that manure, litter or process wastewater generated during the operation are not discharged to a navigable water after the operation has ceased. This Section applies to any CAFO including large CAFOs that met the “no potential to discharge” (NPTD) determination under (R18-9-D903) for the entire period of operation. The Department needs verification that there will be no discharge of any manure, litter or process wastewater that may remain on the site after the CAFO operation ceases.

Subsection (A) requires the owner/operator to develop a closure plan and submit it to the Department for approval. For a Large CAFO that was exempt from the general permit because it qualified for a NPTD determination, the Department will not receive a Notice of Termination (NOT) for that facility. NOTs generally require up-to-date information about the operation, at the time of closure. This type of information about the operation would be important for the Department to evaluate at closure whether or not the facility was covered by a general permit. Therefore the Department has created provision R18-9-D905(A)(2)(a) so that a Large CAFO that met the NPTD determination will submit information that is equivalent to the information required in the NOT for an operation covered by a general permit.

Subsection (B) requires the owner/operator to notify the Department that the closure plan has been fully implemented within 30 days of the date and before redevelopment. This time is needed so that the Department has the opportunity to inspect the facility before non-CAFO related changes are made to the site. (For example, earth is moved or concrete is poured that didn't relate to the closing of the CAFO operation.)

- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

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**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

To analyze the impact of this rulemaking, the Department categorized the types of revisions into the following categories:

- a. updates to the rule to conform with changes to the federal regulations,
- b. minor technical corrections.

In response to revisions that the EPA makes to the NPDES program and to maintain adequate permit and enforcement authority, the Department must make changes to its AZPDES program as required by 40 CFR 123.62(e)). These changes would have been imposed on the regulated community whether or not the Department was the program authority. EPA analyzed the economic impact of these changes in all the rulemakings cited in Table 1. The Department believes that there would be no additional economic impact beyond what is calculated in the federal rulemaking actions for changes pertaining to the CAFO regulations in R18-9-A901, R18-9-A902(B), R18-9-C901, R18-9-D901, R18-9-D902, R18-9-D903, and R18-9-D904 or to the other updated regulations in R18-9-A905.

The Department has specified requirements for a closure plan under R18-9-D905 that are not explicitly required in federal regulations. The closure plan requirement is based on R18-9-D904(C)(2)(b) (based on 40 CFR 122.23(h)) that requires an owner or operator of an operation to demonstrate that "there is no potential for a discharge of remaining manure, litter, or associated process wastewater (other than agricultural stormwater from land application areas) that was generated while the operation was a CAFO." This Section requires the owner or operator to submit basic information about the closure of the operation, including information about the site, the amount of wastes to be removed, method for treating remaining wastes or to control the discharge. The Section also requires the owner or operator to provide the Department with notice that the closure plan has been fully implemented within 30 days of completion of the plan and prior to redevelopment. The Department believes that these requirements will have a minor economic impact on the regulated operations because this provision solely defines what the Department expects to see in the demonstration under R18-9-D904(C)(2)(b) and that the owner or operator of the CAFO should have this information readily available.

Pertaining to the changes to provisions, not related to updated federal regulations, in R18-9-A901, R18-9-A902, R18-9-C901, and R18-9-C905, the Department believes there will be no economic impact from these changes because they are consistent with the current implementation of the program.

In addition, the Department believes that the revisions to R18-9-A905(B) requiring the use of 40 CFR 136 test methods is a minor change with no economic impact because this requirement was technically already a part of the program based on the regulations that were incorporated by reference.

Overall, the incremental impacts from incorporating these changes into the AZPDES rules are minor. The benefits to making these changes are moderate because the Department will be able to continue to administer the AZPDES program without dealing with legal suits that may come forward if the Department does not adopt the federal requirements in a timely manner.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Jane DeRose-Bamman  
Address: ADEQ  
1110 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 771-4374  
Fax: (602) 771-4674  
E-mail: jdb@ev.state.az.us

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Date: Tuesday, October 14, 2003  
Time: 1:00 p.m.  
Location: State of Arizona Building  
1110 W. Washington, Room 250  
Phoenix, AZ 85007  
Nature: Oral Proceeding

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Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 5:00 p.m., October 14, 2003.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department's coordinator, Katie Huebner, at (602) 771-4794 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodations.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

The Department incorporated by reference in the AZPDES program rules several portions of the NPDES program regulations. All incorporations by reference are specified in R18-9-A905.

**13. The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER POLLUTION CONTROL**

**ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**PART A. GENERAL REQUIREMENTS**

Section

- R18-9-A901. Definitions
- R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions
- R18-9-A905. AZPDES Program Standards
- R18-9-A907. Public Notice

**PART C. GENERAL PERMITS**

Section

- R18-9-C901. General Permit Issuance
- R18-9-C905. General Permit Modification and Revocation and Reissuance

**PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS**

Section

- R18-9-D901. CAFO Designation
- R18-9-D902. AZPDES Permit Coverage Requirements
- R18-9-D903. No Potential To Discharge Determinations for Large CAFOs
- R18-9-D904. AZPDES Permit Coverage Deadlines
- R18-9-D905. Closure Requirements

**ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**PART A. GENERAL REQUIREMENTS**

**R18-9-A901. Definitions**

In addition to the definitions in A.R.S. §§ 49-201 and 49-255, the following terms apply to this Article:

1. "Animal confinement area" means any part of an animal feeding operation where animals are restricted or confined including open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables.
- ~~1.2.~~ "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
  - a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
  - b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- ~~2.~~ "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.



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3. "Aquaculture project" means a defined managed water area that uses discharges of pollutants into that designated project area for the maintenance or production of harvestable freshwater plants or animals. For purposes of this definition, "designated project area" means the portion or portions of the navigable waters within which the permittee or permit applicant plans to confine the cultivated species using a method or plan of operation, including physical confinement, that on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.
4. "Border area" means 100 kilometers north and south of the Arizona-Sonora, Mexico border.
5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
6. ~~"Concentrated animal feeding operation" means an animal feeding operation that meets the following criteria:~~
  - a. ~~More than the number of animals specified in any of the following categories are confined:~~
    - i. ~~1,000 slaughter and feeder cattle;~~
    - ii. ~~700 mature dairy cattle (whether milked or dry cows);~~
    - iii. ~~2,500 swine each weighing more than 25 kilograms (approximately 55 pounds);~~
    - iv. ~~500 horses;~~
    - v. ~~10,000 sheep or lambs;~~
    - vi. ~~55,000 turkeys;~~
    - vii. ~~100,000 laying hens or broilers (if the facility has continuous overflow watering);~~
    - viii. ~~30,000 laying hens or broilers (if the facility has a liquid manure system);~~
    - ix. ~~5,000 ducks; or~~
    - x. ~~1,000 animal units; or~~
  - b. ~~More than the following number and types of animals are confined:~~
    - i. ~~300 slaughter or feeder cattle;~~
    - ii. ~~200 mature dairy cattle (whether milked or dry cows);~~
    - iii. ~~750 swine each weighing more than 25 kilograms (approximately 55 pounds);~~
    - iv. ~~150 horses;~~
    - v. ~~3,000 sheep or lambs;~~
    - vi. ~~16,500 turkeys;~~
    - vii. ~~30,000 laying hens or broilers (if the facility has continuous overflow watering);~~
    - viii. ~~9,000 laying hens or broilers (if the facility has a liquid manure handling system);~~
    - ix. ~~1,500 ducks; or~~
    - x. ~~300 animal units; and~~
    - xi. ~~Either one of the following conditions is met: pollutants are discharged into navigable waters through a man-made ditch, flushing system, or other similar manmade device; or pollutants are discharged directly into waters of the United States that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.~~
  - e. ~~An animal feeding operation is not a concentrated animal feeding operation if the animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.~~
6. "CAFO" means any large concentrated animal feeding operation, medium concentrated animal feeding operation, or animal feeding operation designated under R18-9-D901.
7. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility that contains, grows, or holds aquatic animals in either of the following categories:
  - a. Cold-water aquatic animals. Cold-water fish species or other cold-water aquatic animals (including the *Salmonidae* family of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
    - i. A facility that produces less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
    - ii. A facility that feeds the aquatic animals less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
  - b. Warm-water aquatic animals. Warm-water fish species or other warm-water aquatic animals (including the *Ameiuride*, *Centrarchidae*, and *Cyprinidae* families of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
    - i. A closed pond that discharges only during periods of excess runoff; or
    - ii. A facility that produces less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
8. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of

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- the pollutant over the day.
9. "Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to a navigable water from any point source.
- a. The term includes the addition of any pollutant into a navigable water from:
- i. A treatment works treating domestic sewage;
- ii. Surface runoff that is collected or channeled by man;
- iii. A discharge through a pipe, sewer, or other conveyance owned by a state, municipality, or other person that does not lead to a treatment works; and
- iv. A discharge through a pipe, sewer, or other conveyance, leading into a privately owned treatment works.
- b. The term does not include an addition of a pollutant by any ~~indirect discharger~~ industrial user as defined in A.R.S. § 49-255(4).
10. "Draft permit" means a document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit.
- a. A notice of intent to terminate a permit is a type of draft permit unless the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well.
- b. A notice of intent to deny a permit is a type of draft permit.
- c. A proposed permit or a denial of a request for modification, revocation and reissuance, or termination of a permit, are not draft permits.
11. "EPA" means the U.S. Environmental Protection Agency.
12. "General permit" means an AZPDES permit issued under 18 A.A.C. 9, Article 9, authorizing a category of discharges within a geographical area.
13. "Individual permit" means an AZPDES permit for a single point source, ~~or a single facility~~ or a municipal separate storm sewer system.
14. For purposes of Article 9, Part D, "land application area" means land under the control of an animal feeding operation owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.
15. "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at least the number of animals specified in any of the following categories:
- a. 700 mature dairy cows, whether milked or dry;
- b. 1,000 veal calves;
- c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
- d. 2,500 swine each weighing 55 pounds or more;
- e. 10,000 swine each weighing less than 55 pounds;
- f. 500 horses;
- g. 10,000 sheep or lambs;
- h. 55,000 turkeys;
- i. 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
- j. 125,000 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
- k. 82,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
- l. 30,000 ducks (if the animal feeding operation uses other than a liquid manure handling system); or
- m. 5,000 ducks (if the animal feeding operation uses a liquid manure handling system).
- ~~14.~~16. "Large municipal separate storm sewer system" means a municipal separate storm sewer that is either:
- a. Located in an incorporated area with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census;
- b. Located in a county with an unincorporated urbanized area with a population of 250,000 or more, according to the 1990 Decennial Census by the Bureau of Census, but not a municipal separate storm sewer that is located in an incorporated place, township, or town within the county; or
- c. Owned or operated by a municipality other than those described in subsections (~~14~~16)(a) and (~~14~~16)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the large municipal separate storm sewer system.
17. "Manure" means any waste or material mixed with waste from an animal including manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.
18. "Manure storage area" means any part of an animal feeding operation where manure is stored or retained including lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles.

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19. "Medium concentrated animal feeding operation" means an animal feeding operation in which:
- a. The type and number of animals that it stables or confines falls within any of the following ranges:
    - i. 200 to 699 mature dairy cows, whether milked or dry;
    - ii. 300 to 999 veal calves;
    - iii. 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow and calf pairs;
    - iv. 750 to 2,499 swine each weighing 55 pounds or more;
    - v. 3,000 to 9,999 swine each weighing less than 55 pounds;
    - vi. 150 to 499 horses;
    - vii. 3,000 to 9,999 sheep or lambs;
    - viii. 16,500 to 54,999 turkeys;
    - ix. 9,000 to 29,999 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
    - x. 37,500 to 124,999 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
    - xi. 25,000 to 81,999 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
    - xii. 10,000 to 29,999 ducks (if the animal feeding operation uses other than a liquid manure handling system); or
    - xiii. 1,500 to 4,999 ducks (if the animal feeding operation uses a liquid manure handling system); and
  - b. Either one of the following conditions are met:
    - i. Pollutants are discharged into a navigable water through a man-made ditch, flushing system, or other similar man-made device; or
    - ii. Pollutants are discharged directly into a navigable water that originates outside of and passes over, across, or through the facility or otherwise comes into direct contact with the animals confined in the operation.
- ~~15-20.~~ "Medium municipal separate storm sewer system" means a municipal separate storm sewer that is either:
- a. Located in an incorporated area with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or
  - b. Located in a county with an unincorporated urbanized area with a population of 100,000 or more but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or
  - c. Owned or operated by a municipality other than those described in subsections (~~15-20~~)(a) and (~~15-20~~)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the medium municipal separate storm sewer system.
- ~~16-21.~~ "MS4" means municipal separate storm sewer system.
- ~~17-22.~~ "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):
- a. Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
  - b. Designed or used for collecting or conveying stormwater;
  - c. That is not a combined sewer; and
  - d. That is not part of a POTW.
- ~~18-23.~~ "Municipal separate storm sewer system" means all separate storm sewers defined as "large," "medium," or "small" municipal separate storm sewer systems or any municipal separate storm sewers on a system-wide or jurisdiction-wide basis as determined by the Director under R18-9-C902(A)(1)(g)(i) through R18-9-C902(A)(1)(g)(iv).
- ~~19-24.~~ "New discharger" includes an indirect discharger and means any building, structure, facility, or installation:
- a. From which there is or may be a discharge of pollutants;
  - b. That did not commence the discharge of pollutants at a particular site before August 13, 1979;
  - c. That is not a new source; and
  - d. That has never received a finally effective NPDES or AZPDES permit for discharges at that site.
- ~~20-25.~~ "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
- a. After the promulgation of standards of performance under section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, or
  - b. After the proposal of standards of performance in accordance with section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, but only if the standards are promulgated under section 306 (33 U.S.C. 1316) within 120 days of their proposal.

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- ~~24-26~~. “NPDES” means the National Pollutant Discharge Elimination System, which is the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under sections 307 (33 U.S.C. 1317), 318 (33 U.S.C. 1328), 402 (33 U.S.C. 1342), and 405 (33 U.S.C. 1345) of the Clean Water Act.
- ~~22-27~~. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:
- a. Sewage from vessels; or
  - b. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of this state, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources. (40 CFR 122.2)
- ~~23-28~~. “POTW” means a publicly owned treatment works.
- ~~29~~. For purposes of Article 9, Part D, “process wastewater” means water directly or indirectly used in the operation of an animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater includes any water that comes into contact with a raw material, product, or byproduct including manure, litter, feed, milk, eggs or bedding.
- ~~24-30~~. “Proposed permit” means an AZPDES permit prepared after the close of the public comment period (including EPA review), and any applicable public hearing and administrative appeal, but before final issuance by the Director. A proposed permit is not a draft permit.
- ~~25-31~~. “Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing the pollutants into a POTW.
- ~~32~~. For purposes of Article 9, Part D, “production area” means that part of an animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.
- ~~33~~. “Raw materials storage area” means the part of an animal feeding operation where raw materials are stored including feed silos, silage bunkers, and bedding materials.
- ~~26-34~~. “Silviculture point source” means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into navigable waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. For purposes of this definition:
- a. “Log sorting and log storage facilities” means facilities whose discharge results from the holding of unprocessed wood, for example, logs or round wood with or without bark held in self-contained bodies of water or stored on land if water is applied intentionally on the logs.
  - b. “Rock crushing and gravel washing facilities” mean facilities that process crushed and broken stone, gravel, and riprap.
- ~~27-35~~. “Small municipal separate storm sewer system” means a separate storm sewer that is:
- a. Owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharge to navigable waters.
  - b. Not defined as a “large” or “medium” municipal separate storm sewer system or designated under ~~R18-9-902(A)(1)(g)~~ R18-9-A902(D)(2).
  - c. Similar to municipal separate storm sewer systems such as systems at military bases, large hospital or prison complexes, universities, and highways and other thoroughfares. The term does not include a separate storm sewer in a very discrete area such as an individual building.
- ~~28-36~~. “Stormwater” means stormwater runoff, snow melt runoff, and surface runoff and drainage.
- ~~29-37~~. “Treatment works treating domestic sewage” means a POTW or any other sewage sludge or waste water treatment device or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, “domestic sewage” includes

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waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.

38. “Waste containment area” means any part of an animal feeding operation where waste is stored or contained including settling basins, and areas within berms and diversions that separate uncontaminated stormwater.

**R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions**

- A. No change
- B. Article 9 of this Chapter applies to any ‘discharge of a pollutant.’ Examples of categories that result in a ‘discharge of a pollutant’ and may require an AZPDES permit include:
1. ~~Concentrated animal feeding operations~~CAFOs;
  2. ~~Case-by-case designation of a concentrated animal feeding operation;~~
    - a. ~~The Director may designate an animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to a navigable water. The Director shall consider the following factors when making this determination:~~
      - i. ~~The size of the animal feeding operation and the amount of wastes reaching waters of the United States;~~
      - ii. ~~The location of the animal feeding operation relative to waters of the United States;~~
      - iii. ~~The means of conveyance of animal wastes and process waste waters into waters of the United States;~~
      - iv. ~~The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and~~
      - v. ~~Any other relevant factor;~~
    - b. ~~The Director shall not designate an animal feeding operation with less than the number of animals established in R18-9-A901(6) as a concentrated animal feeding operation unless:~~
      - i. ~~Pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or~~
      - ii. ~~Pollutants are discharged directly into navigable waters that originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation;~~
    - c. ~~A permit application is not required from a concentrated animal feeding operation designated under subsection (B)(2) until the Director conducts an onsite inspection of the operation and determines that the operation should and could be regulated under the AZPDES permit program; and~~
    - d. ~~Two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes;~~
  3. ~~2. Concentrated aquatic animal production facilities;~~
  4. ~~3. Case-by-case designation of concentrated aquatic animal production facilities;~~
    - a. ~~The Director may designate any warm- or cold-water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to navigable waters. The Director shall consider the following factors when making this determination:~~
      - i. ~~The location and quality of the receiving waters of the United States;~~
      - ii. ~~The holding, feeding, and production capacities of the facility;~~
      - iii. ~~The quantity and nature of the pollutants reaching navigable waters; and~~
      - iv. ~~Any other relevant factor;~~
    - b. ~~A permit application is not required from a concentrated aquatic animal production facility designated under subsection (B)(4)(a) (B)(3)(a) until the Director conducts an onsite inspection of the facility and determines that the facility should and could be regulated under the AZPDES permit program;~~
  5. ~~4. Aquaculture projects;~~
  6. ~~5. Manufacturing, commercial, mining, and silviculture point sources;~~
  7. ~~6. POTWs;~~
  8. ~~7. New sources and new dischargers;~~
  9. ~~8. Stormwater discharges:~~
    - a. Associated with industrial activity as defined under 40 CFR 122.26(b)(14), which is incorporated by reference in R18-9-A905(A)(1)(d). Discharges composed entirely of stormwater are not considered discharges associated with an industrial activity if the conditions of no exposure as defined under 40 CFR 122.26(g), which is incorporated by reference in R18-9-A905(A)(1)(d), are met;
    - b. From a large, medium, or small MS4;
    - c. From a construction activity, including clearing, grading, and excavation, that results in the disturbance of except operations that result in the disturbance of less than five acres of total land area, unless the disturbance of less than five acres of total land area is a part of a larger common plan of development or sale that will ultimately disturb five acres or more;
    - d. ~~By March 10, 2003, from a small construction activity;~~

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- i. ~~Including the discharge of stormwater from construction activities including clearing, grading, and excavating that result in land disturbance of Equal to or greater than one acre and less than five acres or;~~
- ii. ~~Including the disturbance of less Less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres acre;~~ but
- iii. Not including routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility;
- e.d. Any discharge that the Director determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to a navigable water, which may include a discharge from a conveyance or system of conveyances (including roads with drainage systems and municipal streets) used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers.

**C.** No change

**D.** Director designation of MS4s.

1. The Director may designate and require any small ~~MS4s~~MS4 located outside of an urbanized area ~~serving a population density of at least 1,000 people per square mile and a population of at least 10,000 (other than those described in 40 CFR 122.32(a)(1) and covered under the AZPDES stormwater permit program)~~ to obtain an AZPDES stormwater permit. The Director shall base this designation on whether a stormwater discharge results in or has the potential to result in an exceedance of a water quality standard, including impairment of a designated use, or another significant water quality impact.
  - a. When deciding whether to designate a small MS4, the Director shall consider the following criteria:
    - i. Discharges to sensitive waters,
    - ii. Areas with high growth or growth potential,
    - iii. Areas with a high population density,
    - iv. Areas that are contiguous to an urbanized area,
    - v. Small MS4s that cause a significant contribution of pollutants to a navigable water,
    - vi. Small MS4s that do not have effective programs to protect water quality, and
    - vii. Any other relevant criteria.
  - b. The same requirements for small MS4s designated under 40 CFR 122.32(a)(1) apply to permits for designated MS4s not waived under R18-9-B901(A)(3).
2. The Director may designate an MS4 as part of a large or medium system due to the interrelationship between the discharges from a designated storm sewer and the discharges from a municipal separate storm sewer described under R18-9-A901(~~416~~)(a) and (~~416~~)(b), or R18-9-A901(~~4520~~)(a) or (~~4520~~)(b), as applicable. In making this determination, the Director shall consider the following factors:
  - a. Physical interconnections between the municipal separate storm sewers;
  - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R18-9-A901(~~416~~)(a) and R18-9-A901(~~4520~~)(a);
  - c. The quantity and nature of pollutants discharged to a navigable water;
  - d. The nature of the receiving waters; and
  - e. Any other relevant factor.
3. The Director shall designate a small MS4 that is physically interconnected with a MS4 that is regulated by the AZPDES program if the small MS4 substantially contributes to the pollutant loading of the regulated MS4.

**E.** Petitions. The Director may, upon a petition, designate as a large ~~or~~, medium or small MS4, a municipal separate storm sewer located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R18-9-A901(~~416~~) ~~or~~, R18-9-A901(~~4520~~) or R18-9-A901(35), as applicable.

**~~F.~~** Phase-ins.

1. ~~The Director may phase in permit coverage for a small MS4 serving a jurisdiction with a population of less than 10,000 if a phasing schedule is developed and implemented for approximately 20 percent annually of all small MS4s that qualify for the phased-in coverage.~~
  - a. ~~If the phasing schedule is not yet approved for permit coverage, the Director shall, by December 9, 2002, determine whether to issue an AZPDES permit or allow a waiver under R18-9-B901(A)(3) for each eligible MS4.~~
  - b. ~~All regulated MS4s shall have coverage under an AZPDES permit no later than March 8, 2007.~~
2. ~~The Director may provide a waiver under R18-9-B901(A)(3) for any municipal separate storm sewage system operating under a phase-in plan.~~

**~~G.~~** No change

**~~H.~~** Conditional no exposure exclusion.

1. ~~Discharges composed entirely of stormwater are not considered stormwater discharges associated with an industrial activity if there is no exposure, and the discharger satisfies the conditions under 40 CFR 122.26(g), which is incorporated by reference in R18-9-A905(A)(1)(d).~~

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2. ~~For purposes of this subsection:~~

- a. ~~"No exposure" means that all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and runoff.~~
- b. ~~"Industrial materials or activities" include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products.~~
- c. ~~"Material handling activities" include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.~~

**R18-9-A905. AZPDES Program Standards**

A. Except for subsection (A)(~~4011~~), the following 40 CFR sections and appendices, July 1, ~~2001~~ 2003 edition, as they apply to the NPDES program, are incorporated by reference, do not include any later amendments or editions of the incorporated matter, and are on file with the Department and the Office of the Secretary of State:

- 1. No change
- 2. No change
- 3. No change
- 4. Criteria and standards for the national pollutant discharge elimination system. 40 CFR 125, subparts A, B, D, ~~and H,~~  
and I.
- 5. No change
- 6. No change
- 7. Guidelines for establishing test procedures for the analysis of pollutants. 40 CFR 136.
- ~~7-8.~~ No change
- ~~8-9.~~ No change
- ~~9-10.~~ No change
- ~~10-11.~~ No change

B. A person shall use ~~the a test procedures procedure~~ under 40 CFR 136 9-A.A.C. 14, Article 6 for the analysis of ~~pollutants~~  
a pollutant except:

- 1. If no approved test procedures for a pollutant exist under 40 CFR 136, then a person shall use a test procedure under R9-14-612.
- 2. If the Director specifies in an AZPDES permit a test procedure to be used for the analysis of a pollutant.
- 3. If a person is required to monitor the toxicity of wastewater, that person shall measure toxicity using the following methods:
  - a. EPA-821-R-02-012. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (5th ed. October 2002).
  - b. EPA-821-R-02-013. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. (4th ed. October 2002).

**R18-9-A907. Public Notice**

A. Individual permits.

- 1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied, in one or more newspapers of general circulation where the facility is located. The notice shall contain:
  - a. The name and address of the Department;
  - b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;
  - c. A brief description of the business conducted at the facility or activity described in the permit application;
  - d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;
  - e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
  - f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
  - g. For sources subject to section 316(a) of the Clean Water Act, a statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316); ~~and~~
  - h. Requirements applicable to cooling water intake structures at new facilities subject to 40 CFR 125, subpart I; and
  - ~~h-i.~~ Any additional information considered necessary to the permit decision.
- 2. No change

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- 3. No change
- B. No change

**PART C. GENERAL PERMITS**

**R18-9-C901. General Permit Issuance**

- A. No change
- B. No change
- C. Exemption from filing a Notice of Intent.
  - 1. The following dischargers are not exempt from submitting a Notice of Intent:
    - a. A discharge from a POTW;
    - b. A combined sewer overflow;
    - c. A MS4;
    - d. A primary industrial facility;
    - e. A stormwater discharge associated with industrial activity;
    - f. A ~~concentrated animal feeding operation~~ CAFO;
    - g. A treatment works treating domestic sewage; and
    - h. A stormwater discharge associated with ~~small~~ construction activity. ~~Any person discharging on or after March 10, 2003 shall submit a Notice of Intent at least 90 days before the activity to obtain authorization under a general permit, and 180 days before the activity to obtain an individual permit unless the discharge is authorized by another permit.~~
  - 2. No change
  - 3. No change
- D. Notice of Intent. The Director shall specify the contents of the Notice of Intent in the general permit and the applicant shall submit information sufficient to establish coverage under the general permit, including, at a minimum:
  - 1. The name, position, address, and telephone number of the owner of the facility;
  - 2. The name, position, address, and telephone number of the operator of the facility, if different from subsection (D)(1);
  - 3. The name and address of the facility;
  - 4. The type and location of the discharge;
  - 5. The receiving streams;
  - 6. The latitude and longitude of the facility;
  - 7. For a CAFO, the information specified in 40 CFR 122.21(i)(1) and a topographic map;
  - ~~6-8.~~ The signature of the certifying official required under 40 CFR 122.22; and
  - ~~7-9.~~ Any other information necessary to determine eligibility for the AZPDES general permit.
- E. No change
- F. No change

**R18-9-C905. General Permit Modification and Revocation and Reissuance**

- A. The Director may modify or revoke a general permit issued under R18-9-A907(B), R18-9-A908, and R18-9-C901 if one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.
- B. The Director shall follow the procedures specified in R18-9-A907(B) and R18-9-A908 to modify or revoke and reissue a general permit.

**PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS**

**R18-9-D901. CAFO Designations**

- A. Two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.
- B. The Director shall designate an animal feeding operation as a CAFO if the animal feeding operation significantly contributes a pollutant to a navigable water. The Director shall consider the following factors when making this determination:
  - 1. The size of the animal feeding operation and the amount of wastes reaching a navigable water;
  - 2. The location of the animal feeding operation relative to a navigable water;
  - 3. The means of conveyance of animal wastes and process wastewaters into a navigable water;
  - 4. The slope, vegetation, rainfall, and any other factor affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into a navigable water; and
  - 5. Any other relevant factor.
- C. The Director shall conduct an onsite inspection of the animal feeding operation before the Director makes a designation under subsection (B).
- D. The Director shall not designate an animal feeding operation having less than the number of animals established in R18-9-A901(19)(a) as a CAFO unless pollutants are discharged:
  - 1. Into a navigable water through a manmade ditch, flushing system, or other similar manmade device; or



2. Directly into a navigable water that originates outside of the facility and passes over, across, or through the facility or otherwise comes into direct contact with the animals confined in the operation.
- E. If the Director makes a designation under subsection (B), the Director shall notify the owner or operator of the operation, in writing, of the designation.

**R18-9-D902. AZPDES Permit Coverage Requirements**

- A. Any person who owns or operates a CAFO, except as provided in subsections (B) and (C), shall submit an application for an individual permit under R18-9-B901(B) or seek coverage under a general permit under R18-9-C901(B) within the applicable deadline specified in R18-9-D904(A).
- B. If a person who owns or operates a large CAFO receives a notification of a determination of no potential to discharge under R18-9-D903, coverage under an AZPDES permit described in this Part is not required.
- C. The discharge of manure, litter or process wastewater to a navigable water from a CAFO as a result of the application of manure, litter or process wastewater by the CAFO to land areas under its control is subject to AZPDES permit requirements, except where it is an agricultural stormwater discharge as provided in section 502(14) of the Clean Water Act (33 U.S.C. 1362(14)). For purposes of this Section, an "agricultural stormwater discharge" means a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO when the person who owns or operates the CAFO has applied the manure, litter, or process wastewater according to site specific nutrient management practices to ensure appropriate agricultural use of the nutrients in the manure, litter, or process wastewater, as specified under 40 CFR 122.42(e)(1)(vi)-(ix).

**R18-9-D903. No Potential To Discharge Determinations for Large CAFOs**

- A. For purposes of this Section, "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to enter into a navigable water under any circumstance or climatic condition.
- B. Any person who owns or operates a large CAFO may request a determination of no potential to discharge by submitting:
  1. The information specified in 40 CFR 122.21(f) and 40 CFR 122.21(i)(1)(i) through (ix) on a form obtained from the Department, by the applicable date specified in R18-9-D904(A); and
  2. Any additional information requested by the Director to supplement the request or requested through an on-site inspection of the CAFO.
- C. Upon receiving a request under subsection (B) and if the CAFO has not had a discharge within the five years before the date of the request, the Director may make a case-specific determination that a large CAFO has no potential to discharge pollutants to a navigable water. The Director shall consider:
  1. The potential for discharges from both the production area and any land application area, and
  2. Any record of prior discharges by the CAFO.
- D. Process for making a no potential to discharge determination.
  1. Before making a final decision to grant a no potential to discharge determination, the Director shall issue a notice to the public stating that a no potential to discharge request has been received. The notice shall include a fact sheet, when applicable, and the following information:
    - a. A brief description of the type of facility or activity that is the subject of the no potential to discharge determination;
    - b. A brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination; and
    - c. A description of the procedures for reaching a final decision on the no potential to discharge determination.
  2. The Director shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the Director.
  3. The Director shall notify the owner or operator of the large CAFO of the final determination within 90 days of receiving the request.
- E. If the Director denies the no potential to discharge determination request, the person who owns or operates the CAFO shall seek coverage under an AZPDES permit within 30 days after the denial.
- F. A no potential to discharge determination does not relieve the CAFO from the consequences of a discharge. An unpermitted CAFO discharging a pollutant into a navigable water is in violation of the Clean Water Act even if the Director issued a no potential to discharge determination for the facility. If the Director issued a determination of no potential to discharge to a CAFO facility but the owner or operator anticipates a change in circumstances that could create the potential for a discharge, the owner or operator shall contact the Director and apply for and obtain permit authorization before the change of circumstances.
- G. When the Director issues a determination of no potential to discharge, the Director retains the authority to subsequently require AZPDES permit coverage if:
  1. Circumstances at the facility change;
  2. New information becomes available; or

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3. The Director determines, through other means, that the CAFO has a potential to discharge.

**R18-9-D904. AZPDES Permit Coverage Deadlines**

- A.** Any person who owns or operates a CAFO shall apply for or seek coverage under an AZPDES permit and shall comply with all applicable AZPDES requirements, including the duty to maintain permit coverage under subsection (C).
1. An owner or operator of an animal feeding operation operating before April 14, 2003:
    - a. And defined as a CAFO before [insert effective date of the rule revision] shall apply for or seek permit coverage or maintain permit coverage and comply with the conditions of the applicable AZPDES permit;
    - b. But not defined as a CAFO until [insert effective date of the rule revision] shall apply for or seek permit coverage by a date specified by the Director, but no later than February 13, 2006;
    - c. But changing the operation on or after [insert effective date of the rule revision], resulting in the operation being defined as a CAFO, shall apply for or seek permit coverage as soon as possible, but no later than 90 days after the operational change. If the operational change will not make the operation a CAFO as defined before [insert effective date of the rule revision], the owner or operator may take until April 13, 2006 or 90 days after the operation is defined as a CAFO, whichever is later, to apply for or seek permit coverage.
    - d. But constructing additional facilities on or after [insert effective date of the rule revision], resulting in the operation being defined as a CAFO that is a new source, shall apply for or seek permit coverage at least 180 days before the new source portion of the CAFO commences operation. If the calculated 180-day deadline occurred before [insert effective date of the rule revision] and the operation was not subject to this Article before [insert effective date of the rule revision], the owner or operator shall apply for or seek permit coverage no later than [insert date 30 days from the effective date of this rule revision].
  2. An owner or operator who started construction of a CAFO on or after April 14, 2003, including a CAFO subject to the effluent limitations guidelines in 40 CFR 412, shall apply for or seek permit coverage at least 180 days before the CAFO commences operation. If the calculated 180-day deadline occurred before [insert effective date of the rule revision] and the operation was not subject to this Article before [insert effective date of the rule revision], the owner or operator shall apply for or seek permit coverage no later than [insert date 30 days from the effective date of this rule revision].
  3. Any person who owns or operates a CAFO designated under R18-9-D901(B) shall apply for or seek permit coverage no later than 90 days after receiving a designation notice.
- B.** Unless specified under R18-9-D903(F) and (G), permit coverage is not required for a CAFO determined under R18-9-D903 to have no potential to discharge. If circumstances change at a CAFO that has received a no potential to discharge determination and the CAFO now has a potential to discharge, the person who owns or operates the CAFO shall notify the Director within 30 days after the change in circumstances and apply for or seek coverage under an AZPDES permit.
- C.** Duty to maintain permit coverage.
1. The permittee shall:
    - a. If covered by an individual AZPDES permit, submit an application to renew the permit no later than 180 days before the expiration of the permit under R18-9-B904(B); or
    - b. If covered by a general AZPDES permit, comply with R18-9-C903(B).
  2. Continued permit coverage or reapplication for a permit is not required if:
    - a. The facility has ceased operation or is no longer a CAFO; and
    - b. The permittee has demonstrated to the Director that there is no potential for a discharge of remaining manure, litter, or associated process wastewater (other than agricultural stormwater from land application areas) that was generated while the operation was a CAFO.

**R18-9-D905. Closure Requirements**

- A.** Closure.
1. A person who owns or operates a CAFO shall notify the Department of the person's intent to cease operations without resuming an activity for which the facility was designed or operated.
  2. A person who owns or operates a CAFO shall submit a closure plan to the Department for approval 90 days before ceasing operation. The closure plan shall describe:
    - a. For operations that met the "No Potential to Discharge" under R18-9-D903, facility-related information based on the Notice of Termination form for the applicable general permit,
    - b. The approximate quantity of manure, process wastewater and other materials and contaminants to be removed from the facility;
    - c. The destination of the materials to be removed from the facility and documentation that the destination is approved to accept the materials;
    - d. The method to be used to treat any material remaining at the facility;
    - e. The method to be used to control the discharge of pollutants from the facility;
    - f. Any limitations on future land or water uses created as a result of the facility's operations or closure activities;

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- g. A schedule for implementation of the closure plan; and
- h. Any other relevant information the Department determines to be necessary.
- B.** The owner or operator shall provide the Department with written notice that a closure plan has been fully implemented within 30 calendar days of completion and prior to redevelopment.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R20-5-121                          | Amend                           |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
- Authorizing statute: A.R.S. § 23-107(A)(1)
- Implementing statute: A.R.S. § 23-1067
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 9 A.A.R. 3387, August 1, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- Name: Terrie S. Rendler, Esq., Counsel, Legal Division
- Address: Industrial Commission of Arizona  
800 W. Washington, Suite 303  
Phoenix, AZ 85007
- Telephone: (602) 542-5781
- Fax: (602) 542-6783
- 5. An explanation of the rule, including the agency's reason for initiating the rule:**
- Under A.A.C. 20-5-121, the Industrial Commission is responsible for calculating the present value of workers' compensation awards to effectuate lump sum payouts to applicants. The current rule uses the United States Abridged Life Tables, 1996, to determine the life expectancy of an applicant, which is a necessary part of the lump sum calculation. The Commission initiated the current rulemaking to update the Life Table used in the present value analysis to the 2000 edition to bring the rule into conformity with population trends in the United States.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
- None
- 7. A showing of good cause why the rule is necessary to promote statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
- The proposed amendments do not diminish a previous grant of authority of a political subdivision of this state.
- 8. The preliminary summary of the economic, small business, and consumer impact statement:**
- The proposed amendment concerns only the updating of the life expectancy table to be used in calculating lump sum awards of workers' compensation benefits. Individuals affected by the updated life expectancy table will benefit from the updated rule to the extent that the proposed amendment is intended to make the rule more accurately reflect the population trends in the United States between 1996 and 2000. The Industrial Commission does not anticipate or foresee any measurable negative economic impact on small businesses or consumers as a result of the amendment to this rule. Other than costs associated with printing the rules in a booklet for distribution to the public, the Industrial Commission does not anticipate that the proposed rule change will have any measurable negative economic impact on the Agency.

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**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Terrie S. Rendler, Esq., Counsel, Legal Division  
Address: Industrial Commission of Arizona  
800 W. Washington, Suite 303  
Phoenix, AZ 85007  
Telephone: (602) 542-5781  
Fax: (602) 542-6783

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: October 21, 2003  
Time: 10:00 a.m.  
Location: Industrial Commission of Arizona  
800 W. Washington, Suite 308  
Phoenix, AZ 85007  
Nature: Oral and written comments will be accepted on or before the date set forth above.

**11. Any other matters prescribed by statute that are applicable to the specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

United States Abridged Life Tables, 2000, National Vital Statistics Reports, Vol. 51, Number 3, Table 1, incorporated by reference in R20-5-121(B).

**13. The full text of the rule follows:**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE**

Section

R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Award

**ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE**

**R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Award**

- A.** The Commission shall calculate the present value of an award that is commuted to a lump sum under R20-5-122. The Commission shall not include in the present value calculation compensation paid before the filing of a lump sum commutation petition. The Commission shall use the filing date of a lump sum commutation petition to compute the present value of an award.
- B.** The Commission shall calculate the present value of an award, whether payable for a period of months or based upon the life of the employee, using the United States Abridged Life Tables, ~~1996~~ 2000, National Vital Statistics Reports, Vol. ~~47~~ 51, Number ~~43~~ 3, Table 1 (incorporated by reference and on file with the Secretary of State) and discounted at the rate established by the Commission. This incorporation does not include any later amendment or edition of the incorporated matter. A copy of this referenced material is available for review at the Commission and may be obtained from the U.S. Department of Health and Human Services, Centers for Disease Control. The discount rate is published in the minutes of the Commission meeting establishing the rate and is available upon request from the Commission.